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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 297

HERBERT C. DEESEN, *Petitioner*,

v.

THE PROFESSIONAL GOLFERS' ASSOCIATION OF AMERICA, an unincorporated association, ET AL., *Respondents*.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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DATED: July 22, 1966

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Respondents contend that the failure of petitioner's petition to comply with Rules 19 and 23(1)(h) of this Court's Rules is in itself sufficient reason for denying the writ.[1] Petitioner has totally failed to present the Court with any argument, consonant with Rule 19, as to why this Court should grant the writ.

Quite aside from this technical defect in the petition, however, it is clear from the opinion of the court below that the petition is without merit.

[1] Rule 19 sets forth the "Considerations Governing Review on Certiorari." Rule 23(1)(h) provides that the petition for writ of certiorari must include:

> A direct and concise argument amplifying the reasons relied on for the allowance of the writ. See Rule 19.

REASONS THE WRIT SHOULD NOT BE GRANTED

It is not contended by petitioner that the decision of the court below is in conflict with a decision of another court of appeals.[2] Neither does the petition suggest that the court below has decided an important issue of federal law that has not been decided by this Court or that is in conflict with decisions of this Court. Nor does the petition call for an exercise of this Court's power of supervision.

The Professional Golfers' Association of America ("PGA") has, without question, established rules to determine eligibility for participation in professional golf tournaments that it co-sponsors. As the court below recognized, however, the relevant question, insofar as the antitrust laws are concerned, is whether these rules have been used for an anticompetitive purpose. As the court stated (see Petition, App. A, pp. xiii-xiv):

> It is true that generally speaking, any association that undertakes to sponsor a contest of any kind has power to exclude any applicant from participation for any reason whatsoever, unless such power is curtailed by operation of law. The pertinent inquiry, however, is whether an association intends to use that power in a manner which tends to suppress or destroy competition.

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[2] Petitioner does contend that the decision of the court below is contrary to a decision by that same court in *Washington State Bowling Proprietors Assn., Inc.* v. *Pacific Lanes, Inc.*, 356 F. 2d 371 (9th Cir. 1966). An alleged conflict *within* a circuit is not, of course, one of the stated considerations for granting the writ. Moreover, the same argument was put forth in a petition for certiorari filed in the *Washington State Bowling Proprietors* case, which was denied by this Court on May 31, 1966. (34 U.S.L. Week 3407)

Both the court below and the trial court found that the revocation of petitioner's eligibility for participation in PGA tournaments was not for any anticompetitive purpose. Indeed, the record is clear that PGA's rules enhance competition by ensuring that tournaments are bogged down by players of inferior ability. In the years during which petitioner participated in PGA tournaments his average scores ranged from 76.5 to 86, and during test rounds conducted after this litigation began his scores ranged from 75 to 84. (Petition, App. A, pp. v, vii) The court below held (Petition, App. A, p. xv) that this record

> provided an ample basis for the striking of his name from the list of approved tournament players. Similarly, his showing made during the test rounds arranged after this action was commenced warranted PGA in denying reinstatement to that list.

It is clear, moreover, that the rules of the PGA limiting the number of players who can participate in its tournaments are not only reasonable, they are essential to the orderly conduct of such tournaments. This is because the physical limitations of an eighteen-hole course do not allow more than 150 players to engage in a tournament in a single day. PGA has decided, therefore, that in addition to PGA members, only those who have superior skill at golf can be approved as eligible PGA tournament players. If golfers with as little ability as petitioner were approved as tournament players, the tournaments would be hopelessly overcrowded and the quality of tournament golf would suffer.

But petitioner does not challenge the reasonableness of excluding from PGA tournaments non-PGA mem-

bers who have not the requisite skill to succeed as tournament players. His complaint in this respect seems to be that it is *possible* for a member of the PGA to enter a tournament even though his average score might be worse than those of a non-member, such as petitioner, who is not eligible to participate. This complaint is more hypothetical than real. Of some 230 players who follow the tournament tour, only 70 are PGA members and the balance are approved tournament players. PGA has 4,300 members. The members who follow the tour are among the top tournament players in the country. Thus, petitioner's complaint can meaningfully relate only to those "home-club" PGA members who may wish to enter a tournament when the tour touches their locality.

One reason for allowing this privilege to PGA members is that many local clubs sponsoring a tournament like to see their own professional participate. No high-scoring PGA members ever make the tournament circuit. They are too busy to do so, and could not afford, as petitioner could, to pay out $13,500.00 for expenses in order to win a total of $240.00 over a period of eight years. The privilege of a PGA member to play in a local tournament regardless of his average score does not present any problem of overcrowding tournament courses.

If this privilege were taken away from PGA members their own local club giving a tournament might be deprived of the opportunity to see them perform. But this would be of no benefit whatever to the petitioner. There is simply not enough room on tournament courses to permit non-PGA members, whose skill is as low as that of petitioner, to enter tournaments. Nothing whatever in the record even suggests that

petitioner could gain any advantage if PGA members were subjected to the same qualifying standards with respect to tournaments as non-PGA members.

Respectfully submitted,

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